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THE CODE OF SCHOLARS: USOOL AL-FIQH

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- What is halal and haram?
- Philosophy of the Islamic law
- Usool Al-Fiqh is a science that has an exact methodology for deriving and dictating Islamic Law.
- Anyone deprived from the principles of law are deprived from their God.

<u>This class is beneficial because</u>

1) We can set our priorities, in terms of the obligatory and recommended acts
2) It will help in understanding the complexity and perfection of the shari'ah and its suitability and flexibility for every time and purpose
3) It will help in going through different books of fiqh without getting bogged down by the differences in opinion. It will also help in understanding where those opinions came from.
4) It will help to develop the skill to recognize a fiqh opinion that is only pertinent to the 21st century
5) It will help in recognizing if a "proof" or evidence for a law is valid regarding your own fiqh issues.

<u>Some recommended books on Usool Al Fiqh are:</u>

- "*The Evolution of Fiqh*" by Bilal Phillips
- "*The Principles of Islamic Jurisprudence*" by Mohammad Ibn Hashim Kemal
- "*Introductory text in Islamic Jurisprudence*" by Imam Ahmad Al-Basyouni.

<u>Breaking down the study of Usool al-Fiqh</u> **Binder Page 3**

History of Islamic Law:

- The legal science which studies the historical factors behind the formulation of Fiqh (Islamic Law), its source (the Shari'ah), the emergence of Fuqaha' (Jurists), and the development of the various Mad'habs (Schools of thought) and their Usool afterwards, starting with the beginning of the revelation throughout the different eras until today.

  Example:

  The historical factors behind the formulation of the two primary schools of Usool:

  1) ***Tareeq Al-Mutakallimeen***: that of the Ahl al-Hijaz who relied on Taqleed (uncritical following)
  2) ***Tareeq Al-Fuqahaa***: that of Ahl al-Iraq who relied on Ijtihad (personal reasoning)

Rules of Islamic Law (Values of Islamic Law):

- The study of the Hukum Shar'ee (The command of Allah) and its various values and related principles, including how that command is to be carried out and its conditions for doing so.

  1. ***Hukum Takleefee*** (constituting a demand or an option).
     a. Allah tells us to establish prayers and fast during Ramadan.
  2. ***Hukum Wad'ee*** (constituting an enactment).
     a. The prerequisites of prayer (such as facing the qiblah).

  Example:

  1. ***Hukum Takleefee***: Wajib and Haram.
  2. ***Hukum Wad'ee***: Sabab (cause) and Shart (condition)

PART ONE: UNDERSTANDING USOOL AL-FIQH

Sources of Islamic Law:

- The study of the sources of legislation and enactment of Islamic Law and principal proofs of the Hukum Shar'ee, both the sources agreed upon by the majority of Muslim jurists and not agreed upon.

Example:

- Sources about which there is agreement:
    - The Qur'an, Sunnah, Ijmaa', and Qiyas.
- Sources about which there is disagreement:
    - Statement of the Companions and Istihsaan (Juristic preference).

Dalalat ul-Alfaadh (Textual Implications):

- The study of the implications of the legal texts, language codes, and the methodology and rules of interpretation. It is necessary in understanding how a ruling can be derived from certain evidences.

Example:

Words used for a specific inclusion or exclusion such as Al-Mutlaq (the Absolute) and Al-Muqayyad (the Qualified) and the methodology practiced to determine such texts and reconciling between them.

Ijtihad and Taqleed (Personal Reasoning and Uncritical Following):

- The study of the two methods Muslim Jurists follow in the process of legislation and enactment of the law and issuing the legal verdict (Fatwa).

Example:

- Rules and regulations of Ijtihad and Taqleed, the conditions of the benefactors; both the Mujtahid and Muqallid (layman).
- The etiquettes of Fatwa (issuing the legal verdict) and the Mufti who is the authority of such a verdict.

Al-Qawaa'ed Al-Fiqhiyyah: **Binder page 4**

- The study of the maxims governing the Islamic Law. Maxims of Islamic law refer to a body of abstracts rules which are derived from the detailed study of Fiqh itself. A legal code under which many Hukum Far'ee rules from various areas of the law are systematically arranged.

Hanafi scholars have developed five main principles for deriving fiqh called Al-Qawaa'ed Asliyah. Scholars of other mad'habs followed along and added sub rules under each maxim.

Example:

"Certainty is not removed because of mere doubt" is one of five absolute maxims under which many other secondary maxims are arranged.

- In purification, one who is certain about his/her wudu and doubtful about the nullification of the wudu is considered in a state of purification.
- If you have a habit of making wudu and you walk of the restroom, and then you start prayer and start doubting that you have wudu, do you still need to make wudu'? Then you have to assume that you didn't make wudu because there is certainty that you used the restroom but not making wudu.
- On the other hand, if you know you made wudu but aren't sure if you lost it, you should assume that you still have it because you are certain that you had made it.
- In business transactions, one who admits the reception of debt and doubts the payment (has no proof), even when they had in fact paid is considered liable until he/she provides a proof that suggests otherwise.

Maqasid Ash-Shari'ah:

- The study of the intents and higher objectives of Shari'ah and Islamic Law. The general and specific purpose behind the enactment of a particular rule or value in different areas into Islamic Law. The study of the essential human values be it a

necessity, a need or an accessory. This was developed by Imam Ash-Shatibi.

Example:

five values that all the Prophets shared was to protect and preserving religion (deen), intellect, life, progeny, and wealth.

Welcome to Usool al-Fiqh

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Usool al-Fiqh (as a genitive construction) is defined by its two components:

- ***Usool (plural of Asl):***
  The proof, the foundation, that which is preferable (Al-Rajih), the continuous (original) rule and the original case in rules of Qiyas. [For the purpose of this class, we will be using the first definition]
  Example: Eating pig and a dead animal is haram, which is the Asl. In the case we are lost or in a situation that we have to eat or we die, then we can eat it and it becomes Wajib for us to eat it.
  - Usooli: jurist; one who knows the sources and evidence behind rulings→knows **why** it's wajib to pray five times a day

- ***Al-Fiqh:***
  Linguistically: (faqiha) The understanding for what is intended.
  Technically: (fiqh) The knowledge of the practical rules of Shari'ah acquired from the detailed evidences in the sources of Shari'ah; it does not deal with Aqeedah
  - Faqih: one who understands the rulings of Fiqh→knows it's wajib to pray five times a day

Usool Al-Fiqh (as a term made up of both words): The sciences of knowing what the sources of Fiqh are and how to use those sources, and the circumstances of the benefactor [i.e. the Mujtahid or the Layman (Muqlid-confined to one school of thought)].

A Mujtahid needs to follow all the rules of the Islamic law and cannot be confined in a single school of thought when deriving laws. He also needs to be aware of laws that were abrogated (Nasikh Mansookh).
Sources: Qur'an, Sunnah, ijmaa', ijtihad

PART ONE: UNDERSTANDING USOOL AL-FIQH

Example 1:

وَأَقِيمُوا۟ ٱلصَّلَوٰةَ وَءَاتُوا۟ ٱلزَّكَوٰةَ ۚ وَمَا تُقَدِّمُوا۟ لِأَنفُسِكُم مِّنْ خَيْرٍ تَجِدُوهُ
عِندَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿١١٠﴾

> *110: Muhsin Khan**: And perform As-Salat (Iqamat-as-Salat), and give Zakat**, and whatever of good (deeds that Allah loves) you send forth for yourselves before you, you shall find it with Allah. Certainly, Allah is All-Seer of what you do. [Surah Al-Baqarah, 2:110]*

- This is a specific verse from the Qur'an. We learn from this verse that we must establish salah and we must give zakah. How did we come to that conclusion?
  - The order: Establish Salah!
- The Usool al-Fiqh principle: If Allah commands us to do something (Amr), the default is that it is compulsory for us to do it NOW.
  - Thus: establish salah is compulsory (fard).

Example 2**:** The order: Give Zakah!

- The Usool Al-Fiqh principle: If Allah commands us to do something, the default ruling is that it is compulsory for us to do it.
  - Thus: Giving zakah is compulsory (fard).
- The way we can tell if something is wajib or mustahab and so on is by the way the order is given, such as by direct command or by encouragement

Subject: The legal proofs which lead to the deduction of rules of Fiqh.

Purpose:

- To deduce the rules of Fiqh from indications that are provided in the sources of Islamic Law, and to help the jurist obtain an adequate knowledge of the sources of Islamic Law and of the methods of juristic deduction and inference.

Objective:

- To regulate Ijtihaad and guide jurists in their effort at deducing the law from its sources.
- To protect the Islamic System from corruption by those who are unfit to make Ijtihad but do so anyway [Surah A'raf (7:33) forbids speaking about Allah about which one has no knowledge]

- قُلْ إِنَّمَا حَرَّمَ رَبِّيَ ٱلْفَوَٰحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَٱلْإِثْمَ وَٱلْبَغْىَ بِغَيْرِ
ٱلْحَقِّ وَأَن تُشْرِكُوا۟ بِٱللَّهِ مَا لَمْ يُنَزِّلْ بِهِۦ سُلْطَٰنًا وَأَن تَقُولُوا۟ عَلَى ٱللَّهِ مَا
لَا تَعْلَمُونَ ٣٣

*33: Muhsin Khan**:** Say (O Muhammad SAW): "(But) the things that my Lord has indeed forbidden are AlFawahish (great evil sins, every kind of unlawful sexual intercourse, etc.) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partners (in worship) with Allah for which He has given no authority, and* ***saying things about Allah of which you have no knowledge."*** *[Surah al-A'raaf, 7;33]*

<u>The need for Usool al-Fiqh</u>:

- It became apparent when unqualified persons attempted to carry out Ijtihad and the risk of error and confusion in the development of Shari'ah became a source of anxiety for Muslim scholars.
- The only people that need to use it are the ones that are in the position of implementing the Shari'ah. It is not needed to be used by everyone.

<u>The ruling of Usool al-Fiqh</u>:

- Fard Kifaya: obligatory upon the community except for the Mujtahid and Muslim jurist where it becomes Fard Ayn (personally obligatory).

<u>Other Usool al-Fiqh principles</u> include (among others): Binder page 6

- If Allah forbids us from something, the default is that it is forbidden to do that action.
- The Prophet's (sallallahu aleyhiwasalam) actions are proofs for Islamic Law.
    - To what extent? E.g.: he (sallallahu aleyhiwasalam) loved eating pumpkins; do we have to love it too?
- If a statement was made and no scholars comment (or make an objection) on it, that statement does not carry the strength of Ijmaa'.

Fiqh speaks about everything that is needed to be done in terms of the fard and the haram within our actions.

Usool al-Fiqh deals in where we get those rules and regulations from.

Fiqh vs. Usool Al-Fiqh

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Rulings vs. Where one derives rulings from and how to understand evidences in general

Fiqh teaches us:	**Usool Al Fiqh teaches us:**
It is only Fard to pray if one is sane and has reached the age of puberty	What does Haram mean, what is Mustahab, etc.
If someone talks in Salah, it breaks their Salah	How to derive a ruling from an Islamically acceptable source (i.e. How do we understand some commandments as being sunnah as opposed to being fard)
It is Haram to eat pork	Which humans are authorized to issue legal verdicts and deduce rules of Islamic Law from the sources of Islamic Law In other words, what are the conditions of a Mujtahid and what should he do when sources of legislation apparently contradict
Giving Zakah is Fard	What can be used as proof for a fatwa (i.e. a Mufti can use the Qur'an or a Mufti cannot use today's horoscope)
If someone passes wind it breaks their wudu	How to reconcile between two different evidences when they appear to contradict each other
It is only Fard to pray if the time for Salah has arrived	How to interpret different language codes
It is Fard (compulsory) to pray five times a day	How to deduce a new ruling based on a ruling of an original case mentioned in the sources of Islamic Law

How did scholars come to these Fiqh conclusions? They had to use the tools taught by Usool Al-Fiqh (The Methodology of deriving Fiqh)

- Fiqh deals with actions of you and I and within the details of those actions.
- Usool Al-Fiqh deals with where Islamic rules come from, or its sources, and why we can use the sources in such a manner.

2. Where do these Usool al-Fiqh Principles come From?

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Just like specific Fiqh rulings (like praying five times a day) need proof, such is the case with the principles of Fiqh. Here we will look at where principles/codes come from.

One: From the Qur'an

> **Example:** There is an Usool al-Fiqh principle that "there can be no commandment upon a person which is more than what that person is capable of."
>
> This is derived from the verse:

لَا يُكَلِّفُ ٱللَّهُ نَفۡسًا إِلَّا وُسۡعَهَاۚ لَهَا مَا كَسَبَتۡ وَعَلَيۡهَا مَا ٱكۡتَسَبَتۡۗ رَبَّنَا لَا
تُؤَاخِذۡنَآ إِن نَّسِينَآ أَوۡ أَخۡطَأۡنَاۚ رَبَّنَا وَلَا تَحۡمِلۡ عَلَيۡنَآ إِصۡرٗا كَمَا حَمَلۡتَهُۥ
عَلَى ٱلَّذِينَ مِن قَبۡلِنَاۚ رَبَّنَا وَلَا تُحَمِّلۡنَا مَا لَا طَاقَةَ لَنَا بِهِۦۖ وَٱعۡفُ عَنَّا وَٱغۡفِرۡ
لَنَا وَٱرۡحَمۡنَآۚ أَنتَ مَوۡلَىٰنَا فَٱنصُرۡنَا عَلَى ٱلۡقَوۡمِ ٱلۡكَٰفِرِينَ ٢٨٦

."

*286: Muhsin Khan**: Allah burdens not a person beyond his scope**. He gets reward for that (good) which he has earned, and he is punished for that (evil) which he has earned. "Our Lord! Punish us not if we forget or fall into error, our Lord! Lay not on us a burden like that which You did lay on those before us (Jews and Christians); our Lord! Put not on us a burden greater than we have strength to bear. Pardon us and grant us Forgiveness. Have*

mercy on us. You are our Maula (Patron, Supporter and Protector, etc.) and give us victory over the disbelieving people. [Surah Al-Baqarah, 2:286]

With this ayah, we cannot excuse ourselves from the obligatory acts in Islam without a valid reason. This is for the optional acts in Islam or for those with valid reasons.

Two: From the Sunnah

Example: There is an Usool al-Fiqh principle that states, "If we are commanded to do something, the default ruling is that it is compulsory for us to do it."

If it is an order and command, the thing would become wajib and we need to do it immediately, but if He gave a command with only words of encouragement without direct command, it would be considered mustahab.

This is derived from the statement of the Prophet SAW,

"If it were not for the burden placed on my Ummah, I would have commanded the use of Miswak at each Salah." [Agreed Upon]

Three: From the Arabic language

Example: There is an Usool al-Fiqh principle that states, "If a command is given it requires that the person do it immediately."

This is derived from the science of the language, something that linguists understand. For example, they'll say, if a master tells his servant, "Get me water," that servant would be blameworthy if he delayed in bringing the water.

The Qur'an was revealed in clear, pure Arabic language "lisanin Arabeeyin mubeen." We can understand the language of the Arabs and their culture and the way they use certain terms to understand the Qur'an.

Four: From Logic

Example: There is an Usool al-Fiqh principle that states, "If two Mujtahids disagree on a specific ruling then one of them is wrong."

This is derived from pure logic. If two people make two opposing opinions, one says apples and the other says oranges, then logically one of them is wrong. However, this only refers to completely contradictory rulings. For example, some pray two rak'ahs before 'Asr and some pray 4, but both are justified.

Also, both opinions could be acceptable, even if only one was correct. The sahaba once differed on when to pray 'Asr, as Muhammad (sallallahu aleyhiwasalam) told them not to pray until they had reached their destination. As the sun began setting, some Sahaba decided the Prophet (sallallahu aleyhiwasalam) only meant they should hurry, not that they should actually miss the prayer, and decided to pray. Another group decided to take the Prophet (sallallahu aleyhiwasalam) literally and prayed 'Asr after the sun had set. Muhammad (sallallahu aleyhiwasalam) accepted both approaches, but those who prayed on time chose the correct option according to Sheikh Uthaymin rahimahu Allah.

History of Usool al-Fiqh

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Era of the Prophethood:

No need for methodology because solutions to problems were obtained through either divine revelation or the Messenger's(sallallahu aleyhiwasalam) direct ruling. Many Usool principles were founded and obviously practiced by the Messenger of Allah(sallallahu aleyhiwasalam) and therefore laid the foundation down for this science.

After the Prophet (sallallahu aleyhiwasalam) died, the first two sources were established, Qur'an and Sunnah, and Ijmaa' and Qiyas began coming out

Example:

Encouraging Ijtihaad of the Sahaba:

"If the Hakim exerts an Ijtihaad and appeared to be correct, he will get double reward and if the Hakim exerts an Ijtihaad and appeared to be wrong he will get one reward." [Bukhari and Muslim]

The usage of Qiyas in comparing a kiss during the month of Ramadhan to rinsing one's mouth, as both don't break the fast.

Era of the companions:

- Their decisions remained in close contact with the teaching of the Messenger of Allah(sallallahu aleyhiwasalam) as a source of law.
- Their decisions were mainly inspired by the Messenger's(sallallahu aleyhiwasalam) precedent.
- They exercised Ijtihaad and Qiyas widely to answer many unprecedented events.
- The principle of Ijmaa' was developed.

Ibn Umar: *"It is feared that rocks fall down from the skies upon you, I tell you the Messenger of Allah (sallallahu aleyhiwasalam) said such and such and you tell me Abu Bakr and Umar said such and such."*

Umar ibn Al-Khattab: *"Recognize similar cases and, using your intelligence, make an analogy."*

Umar was known for doing shura and deriving laws by using reasoning based on the sources

Ear of the Taabi'een:

At the time of the Taabi'een, many new nations entered into Islam. With those nations came new issues. Many of the Mujtahids of this time period fell back on specific principles to derive those Islamic rulings. Disputation and diversity of juristic thought in different quarters accentuated the need for clear guidelines. New sources for deriving fiqh were developed at this time, including Al-Istihsaan (Juristic Preference).

Imam Malik considered the practice of people of Madinah to be a source

The first Usool al-Fiqh book by Imam Shaafi'ee: In 204H (820 CE), he wrote a book called Ar-Risaalah. In it he gathered and articulated the principle by which a scholar could come to his conclusions. He called his book Ar-Risalah (the message). His methods weren't based so much on philosophy as his mad'hab now uses.

Two Classical Approaches

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	The Theoretical Approach Formed independently of fiqh	**The Deductive Approach** Formed in light of fiqh
Name of School	Tareeqat Al-Mutakallimeen, Usool Ash-Shafi-eyyah	Tareeqat Al-Fuqahaa, Usool Al-Hanafiyyah
Mad'hab of School	Maliki, Shafi'ee, Hanbali, and the Mu'tazilah (aka Usool Al-Shafa'eeye)	Hanafi - Limited amount of linguistic and very practical. They would follow the imams.
Main Approach	1. The exposition of the theoretical doctrine prior to the application of the issue of Fiqh. 2. Articulating the theoretical principles of Usool al-Fiqh independently without necessarily attempting to relate these to Fiqh itself. (like discussing the physical attributes of angels) 3. Engaging into complex issues of philosophical character which may or may not contribute to the development of the practical rules of Fiqh. Such as the issue of the Prophet's(sallallahu aleyhiwasalam) infallibility before the prophetic mission. They only discuss these in order to perfect the theory.	1. The theory is formulated in the light of its application to relevant issues of Fiqh. 2. In a pragmatic approach, principles of Usool Al-Fiqh are expounded in conjunction with Fiqh itself. (If it didn't have any effect on fiqh, it was not to be discussed for the purpose of deriving Usool principles) 3. A principle of Usool which appears to be in conflict with an established Fiqh principle entails an adjustment to the theory in different ways. Theoretical conversations would not be found in this Mad'hab. Since it doesn't concern the practicality of the theory. Like we won't concerns ourselves about the infallibility before Prophethood.
Major Books	1. Al-Mutamad by Abdul Hussayn Al-Bassri 436H (1044 CE). 2. Al-Burhan by Imam Al-Haramayn Al-Juwayni 487H (1094 CE). 3. Al-Mustasfa by Al-Ghazali 505H (1111 CE). 4. Al-Mahsoul by Fakhruddin Al-Razi 606H (1209 CE). 5. *Al-Ihkaam Fi Usool Al-Ahkam* by Al-Aamidi 713H (1314 CE).	1. *Kitab fil Usool by* Abul Hassan Al-Karhi 340H (951 CE). 2. *Usool Abu Bakr Al-Razi Al-Jassas* 370H (980 CE). 3. *Ta'sees Al-Nadhar* by Al-Dabboossi 430H (1038 CE). 4. *Usool Al-Bazdawi* 482H (1089 CE). 5. *Usool Al-Sarakhsi* 490H (1096 CE).

- The Theoretical or rational approach was used by the people in the Hijaz area only to derive principles of Usool Al-Fiqh. After deriving the principles from the Qur'an and Sunnah, scholars attempted to fit their mad'habs opinions to them. If they didn't fit, they were to be modified.
    - When it came to deriving Islamic Law, they relied on Taqleed, limiting themselves to whatever texts they had, and were therefore also known as the literalists. Those in the Hijaz area followed this approach because they had access to many more ahadith.
    - Independent of previous imams' opinions
    - Don't look into opinions of fiqh
    - Engage in conflicts of theory and philosophy for no reason
        - E.g.: infallibility of Prophet (sallallahu aleyhiwasalam) before Prophethood→ We're not obliged to follow his actions before he became a Prophet
    - The followers of the mad'hab developed the principles
- The Deductive or traditional approach was used by the people of Iraq who were exposed to Persian culture, which emphasized rational reasoning. It is called traditional because the principles of Usool were derived based on Imam Abu Hanifa's opinions on fiqh issues. If one of his opinions contradicted a principle of Usool, the principle itself had to be modified. This is why it is difficult for the Hanafi school of thought to say the imam was wrong. Imam Karkhi says: if it contradicts the statement of the sheikh, then maybe the source can be understood in two ways or this opinion is a better one
    - When it came to deriving Islamic Law, Imam Abu Hanifa used Ijtihad if he had no available source (though there could have been sources which he didn't know about). Therefore, his mad'hab is rational in terms of how Islamic Law was derived→practical and easy to understand
    - number of principles limited because Hanafis just follow the example of the imam

Even though there is only one major mad'hab that used Tareeqat Al-Fuqaha, it has the maximum number of followers. In general

- The Hanbali mad'hab is followed by those in Saudi Arabia

- The Maliki mad'hab is followed by those in North Africa and Spain
- The Shafi'ee mad'hab is followed by those in Yemen, East Africa and Indonesia, and Malaysia
- The Hanafi mad'hab is followed by those in India, Pakistan, Turkey, Iraq, and most other Muslims in the world

Tareeqat Al-Muta'akhireen:

This is a third approach to deriving principles of Usool which developed after the first two and reconciled them both. Most contemporary scholars use this approach.

Most books come from the Hanafi approach

Badee'un Midham: Imam As-Sa'ati 694 H

Tanqeeh Al-Usool: Sadrush Shar'iah 747 H

Jam'ul Jawaami: Tajuddin As-Subki (Shafi') 771 H

At-Tahreer: Abil Humam Al-Hanafi 861 H

Musallam Ath-thuboot: Ibn Abdish-Shakoor (Hanafi) 1119 H

Fawatih Ar-Rahamoot (commentary on ^): Ibn Nidhamuddin Ansari

Part One: Understanding Usool al-Fiqh